

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	CIVIL NO. 4:13-cv-00194
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
CITY OF DES MOINES, IOWA, and)	
MIDAMERICAN ENERGY COMPANY,)	
)	
Defendants.)	

COMES NOW the United States of America, through counsel, and for its cause of action against Defendants, the City of Des Moines, Iowa, and MidAmerican Energy Company states:

I. PARTIES.

1. The United States of America is Plaintiff on its own behalf and on behalf of the Department of Veterans Affairs, herein after referred to as the VA, an agency of the United States, which owns and operates the Veterans Affairs Medical Center in Des Moines, hereinafter referred to as the VAMC, in Des Moines, Iowa, which is located in the Southern District of Iowa.

2. The City of Des Moines, Iowa, is an Iowa municipal corporation located in Polk County, Iowa.

3. MidAmerican Energy Company is an Iowa corporation engaged in generating, distributing, and selling electricity and in distributing, selling and transporting natural gas.

II. JURISDICTION AND VENUE.

4. The Court has subject matter jurisdiction in this case because the United States is the plaintiff, pursuant to 28 U.S.C. § 1345, and because it is a civil action arising under the Constitution and laws of the United States, pursuant to 28 U.S.C. § 1331.

5. Venue for this case is proper in the Southern District of Iowa because the defendants reside in said district and because all the events or omissions giving rise to the claims occurred in said district, pursuant to 8 U.S.C. § 1391(b).

III. FACTS SUPPORTING CLAIM FOR RELIEF.

6. The VAMC is a medical facility operated by the VA in Des Moines, Iowa.

7. The VAMC includes a hospital and clinics providing a wide range of diagnostic and treatment services to veterans of the United States armed forces requiring such services for their physical or mental conditions on both an inpatient and outpatient basis.

8. The VAMC obtains its electricity and natural gas service from MidAmerican Energy Company, which is the sole source for such services available to the VAMC.

9. The electricity and natural gas services provided the VAMC are essential to its ability to function as a medical facility, and if such service were discontinued, the VAMC would need to severely curtail the services provided. This would cause a hardship on the patients of the VAMC, many of whom do not have access to other sources of medical care.

10. MidAmerican Energy Company provides such services under an exclusive franchise agreement with the City of Des Moines.

11. The City of Des Moines has adopted Ordinance No. 14,341, relating to the franchise granted MidAmerican Energy Company to provide electricity in the city and Ordinance No. 14,342 relating to the franchise granted MidAmerican Energy Company to provide natural gas in the city, hereinafter collectively referred to as the ordinances.

12. Section 6 of each of the ordinances provides for what the ordinance calls a franchise fee. These so-called franchise fee provisions require MidAmerican Energy Company to collect from its customers within the corporate limits of the City of Des Moines, including the VAMC, an amount equal to five percent (5%) of their gross bill for electricity or natural gas to be remitted to the City of Des Moines.

13. Nothing in the ordinances imposes any obligation on the part of MidAmerican Energy Company to remit any of its own funds to the city in the event that a customer fails to pay the so-called franchise fees.

14. This imposition is authorized by *Iowa Code* § 364.2(f)(1) (2011) which authorized a “franchise fee” based upon a percentage of the gross revenues of a franchisee not to exceed five percent (5%) “without regard to the city’s cost of inspecting, supervising, and otherwise regulating the franchise” and that “such fees collected in excess of the amounts necessary to inspect, supervise, an otherwise regulate the franchise may be used by the city for any other purpose authorized by law.”

15. Because the above described fees are not imposed on MidAmerican Energy Company and then charged to its customers as a business expense, but paid only by the customers with the company only acting as a conduit to the City of Des Moines, they impose obligation imposed directly on the customers, including the VAMC.

16. Because the above described fees are not based upon the costs incurred by the City of Des Moines in regulating the utility franchise and may be applied to pay for the general expenditures of the City, they are not a “user fee” but a tax.

17. The Supremacy Clause in the Constitution of the United States, Art. VI, cl.2, prohibits the City of Des Moines from imposing such a tax on the operations of any agency of the United States, including the VAMC.

18. The VA has advised the City of Des Moines that it considers the above described fees an unconstitutional tax on the operations of the VAMC, and has refused to pay the fees.

19. The VAMC recently received a Disconnect Notice from MidAmerican Energy Company advising it that if the sum of \$8,086.84, the then accumulated amount of the disputed fees, were not paid by April 24, 2013, the electricity and natural gas service to the VAMC would be disconnected, which would necessitate a severe curtailment on the operations of the VAMC. The VA has subsequently been advised that MidAmerican Energy Company will not disconnect such service without further notice while these issues are being resolved between the City of Des Moines and the United States.

IV. RELIEF SOUGHT.

20. The Court should enter a Declaratory Judgment concluding that the so-called franchise fee as currently constituted under the ordinances and *Iowa Code* § 364.2(f)(1) (2011) is a direct tax on the operations of the VAMC which is prohibited by the Supremacy Clause of the Constitution of the United States, Art. VI, cl.2.

21. The Court should permanently enjoin the City of Des Moines and MidAmerica Energy Company from imposing, collecting, or enforcing the so-called franchise fee as currently constituted under the ordinances and *Iowa Code* § 364.2(f)(1) (2011) on, from, or against the VAMC.

WHEREFORE the United States of America prays that the Court enter a Declaratory Judgment concluding that the so-called franchise fee as currently constituted under the ordinances and *Iowa Code* § 364.2(f)(1) (2011) is a direct tax on the operations of the VAMC which is prohibited by the Supremacy Clause of the Constitution of the United States, Art. VI, cl.2, permanently enjoin the City of Des Moines and MidAmerica Energy Company from imposing, collecting, or enforcing the so-called franchise fee as currently constituted under the ordinances and *Iowa Code* § 364.2(f)(1) (2011) on, from, or against the VAMC, and grant such other relief the Court deems appropriate in the circumstances.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 26, 2013, I electronically filed the foregoing with the Clerk of Court using the ECF system and a true copy of the foregoing was served either electronically or by U.S. First Class Mail upon the following:

City of Des Moines, Iowa
MidAmerican Energy Company

/s/Gary L. Hayward
Gary L. Hayward
Assistant U.S. Attorney